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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/774,345

02/06/2004

David H. Cole

V-018-C2

5284

7590 08/01/2007
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EXAMINER

WOO, JULIAN W

ART UNIT	PAPER NUMBER
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3731

MAIL DATE	DELIVERY MODE
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08/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/774,345

Applicant(s)

COLE ET AL.

Examiner

Julian W. Woo

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 47-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 60-64 is/are allowed.
- 6) ☒ Claim(s) 47, 48, 50, 51, 58, and 59 is/are rejected.
- 7) ☒ Claim(s) 49 and 52-57 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 47, 48, 50, 51, 58, and 59 are rejected under 35 U.S.C. 102(e) as being anticipated by Swanson et al. (6,113,612). Swanson et al. disclose, at least in figures 2 and 7-11 and in col. 4, lines 54-59 and col. 13 lines 39-42; a method for forming a magnetic port in a first hollow body (300) having a lumen, where the method includes forming an opening in a wall of the first hollow body with a delivery device (200) including a tip component (220) adapted to cut through tissue, providing a first securing component (10) capable of producing a magnetic field (i.e., the component is formed of a metallic material that is inherently capable of producing a magnetic field, when exposed to an external magnetic field), and solely coupling the first securing component to the first hollow body by a mechanical attachment (at 42) to form a magnetic port in the first hollow body, where the mechanical attachment has an expandable structure that is in a collapsed condition when it is introduced through the opening in the wall of the first hollow body and is expanded to engage the wall of the first hollow body, where the expandable structure comprises a plurality of arms (at 40)

that are generally coplanar for contacting the wall of the first hollow body, where the arms are self-expanding (when made of a super-elastic material), and where the delivery device is adapted to retain the expandable structure in a collapsed condition.

Allowable Subject Matter

3. Claims 49 and 52-57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination discloses a method for forming a magnetic port in a first hollow body having a lumen, the method includes forming an opening in a wall of the first hollow body with a delivery, providing a first securing component capable of producing a magnetic field, coupling the first securing component to the first hollow body by a mechanical attachment to form a magnetic port in the first hollow body, where the mechanical attachment has an expandable structure that is in a collapsed condition when it is introduced through the opening in the wall of the first hollow body and is expanded to engage the wall of the first hollow body, and where a second securing component, capable of being attracted by a magnetic field and joined to a second hollow body, is magnetically coupled to the magnetic port to form an end-to-side anastomosis; or where the second securing component is coupled to a magnetic port formed in the wall of the second hollow body and is magnetically coupled to the first securing component to form a side-to-side anastomosis.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

5. Claims 60-64 are allowed.

6. The following is an examiner's statement of reasons for allowance: None of the prior art of record, alone or in combination, discloses a method of coupling a lumen of first hollow body to a lumen of a second hollow body, where the method includes, inter alia, attaching a first coupling component, capable of producing a magnetic field and having an opening, to the first hollow body by expanding a portion of the first coupling component within the lumen of the first hollow body; attaching a second coupling component, capable of producing a magnetic field and having an opening, to the second hollow body by expanding a portion of the second coupling component within the lumen of the second hollow body, and magnetically coupling the first coupling component to the second coupling component.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Amendment

7. Applicant's arguments with respect to claims 47-49 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Spence et al. (5,868,763) and Peterson et al. (6,152,937) teach methods for coupling hollow bodies.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo
Primary Examiner

July 26, 2007